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California State Senate

COMMITTEE
ON
BUDGET AND FISCAL REVIEW

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Agenda
June 5, 2008
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CORRECTIONS AND OTHER OPEN ISSUES

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5225

California Department of Corrections and Rehabilitation

Program Description

5225-001-0001 California Department of Corrections and Rehabilitation

Background. Senate Budget Subcommittee #4 has held eight hearings on corrections over the past three months. Expenditures on state corrections are one of the fastest growing parts of the state budget. Over the past seven years spending on state corrections has grown by \$4.7 billion or 84 percent, which is an average increase of 9 percent annually. Expenditures on state corrections now account for 10 percent of the overall state budget, which is the same amount that the state spends on higher education.

At the March 12 hearing, the Subcommittee reviewed California's current system of parole and how it differs from other states. At this hearing the Subcommittee learned that most other states directly discharge some offenders once they serve their prison term. Direct discharge means that the offenders are not placed on parole supervision after they leave state prison. Currently, California puts nearly all offenders on parole for a three-year period (some offenders, like sex offenders, have longer parole periods). This is one of the factors that have lead to California's high recidivism rate (nearly 70 percent). In addition, many of the states that have parole also continue to have an indeterminate sentencing system. California switched from an indeterminate sentencing system to a determinate sentencing system in the late 1970s. An indeterminate sentencing system allows an offender to serve a portion of their sentence in the community on parole; determinate sentencing generally does not allow for this flexibility.

At the April 17 hearing, the Subcommittee reviewed the LAO's proposal to realign parolees that were convicted of non-violent, non-serious offenses from the state to the county. The LAO proposed funding this realignment by shifting existing property taxes used by water districts and sales tax monies allocated to cities to fund the realignment. The Subcommittee heard significant testimony regarding the potential impacts and perceived problems with this funding proposal. However, the Subcommittee also heard testimony about the potential merits of serving offenders locally in a community corrections model. Nevertheless, without the additional resources to fund the parole realignment, local government representatives indicated that realignment of parolees would only further burden local probation caseloads.

Program Description

At the May 5 hearing, the Subcommittee reviewed the potential impact of three initiatives, two that have qualified for the November 2008 ballot, and one that has turned in signatures and is currently pending signature verification for the November 2008 ballot. Two of these initiatives, the Safe Neighborhood Act and Marsy's Law, could increase state expenditures by over \$1 billion for corrections and local law enforcement and restrict the state's ability to reduce these expenditures in future years or make policy changes that would reduce expenditures on state corrections. The third initiative, the Nonviolent Offender Rehabilitation Act of 2008 would divert additional state funding to drug treatment and would save the state over \$2.5 billion due to reduced prison construction. The Subcommittee found that all three of these initiatives would have significant impacts on the state budget and the Legislature's ability to manage state resources.

At the April 14 and April 28 hearings, the Subcommittee reviewed the department's implementation of Chapter 7, Statutes of 2007 (AB 900, Solorio). This legislation was passed by the Legislature in 2007 to help eliminate the "bad beds" in the state prisons by building new prison beds and re-entry facilities that would provide offenders an opportunity to transition back into the community. This legislation provided \$7.4 billion to construct additional in-fill prison beds, re-entry facilities, specialized health care beds, and jail beds. Funding (\$350 million General Fund) was also included to address infrastructure deficiencies at existing prison facilities and expand rehabilitation programs. Shortly after the passage of AB 900, the Governor convened strike teams for facilities construction and rehabilitation programs. The facilities strike team found major deficiencies in the department's infill plan and the department is in the process of developing a new plan that includes the construction of more celled housing. The department has plans for four infill projects that will add 6,000 beds; but, to date, these projects have not been submitted to the Legislature for review. The department is also in the midst of a major effort to increase utilization of existing rehabilitation programs and implement a new system that is developed around a risk/needs assessment that is administered to the offender when he/she enters state prison. The department is implementing a full-scale pilot project of the new system at California State Prison, Solano, referred to as the Proof Project.

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Also at the April 14 hearing, the Subcommittee heard testimony from the federal court-appointed Receiver over medical care in our state prisons. The Receiver was appointed by the federal court after the court found in the *Plata* case that the state was in violation of the Eighth (prohibits cruel and unusual punishment) and Fourteenth (right to due process and equal protection) Amendments to the U.S. Constitution and it was determined that the department could not remedy these violations on its own. The federal courts have found that the state is in violation of the U.S. Constitution in various other cases that have been brought against the state, including *Coleman* related to mental health, *Perez* related to dental health, and *Armstrong* related to offenders with disabilities. Three of the judges overseeing these cases formed a three-judge panel in 2007 to determine if overcrowding in the state prison system is the primary cause of the state's non-compliance with the U.S. Constitution. Pursuant to the Prison Litigation Reform Act, one remedy available to the federal court to reduce overcrowding would be a "prisoner release order." There have been ongoing settlement discussions in this case, and, on June 2, 2008, a draft settlement agreement was released by the court. Negotiations are expected to continue for at least the next 30 days.

Governor's Budget Balancing Reduction Summary. The Governor's January budget proposal contained two population reduction proposals—20-month early release and summary parole for certain inmates. Under the Governor's proposal, offenders placed on summary parole would not be supervised and could not be sent back to prison without a new felony conviction. Under the Governor's proposal, offenders placed on summary parole would be subject to search and seizure without probable cause by any peace officer. The Governor's January budget proposal assumed \$354 million in savings in the budget year from implementing these reform proposals.

The Governor's May Revision proposal withdrew the 20-month early release proposal. This reduced the budget year savings by \$256 million. The May Revision continues to assume the implementation of summary parole for non-serious, non-violent offenders and assumes \$76 million in additional savings. Total savings related to the summary parole proposal are now estimated to be \$174 million.

At the March 12 hearing, the Subcommittee reviewed these proposals. Significant concerns were raised regarding the proposal to release offenders up to 20-months early from state prison. Specifically, the LAO found that this policy disrupted the continuum of sanctions for certain offenders. For example, some offenders would effectively get less "punishment" under the 20-month early release proposal than if they were diverted to a local treatment program or served their sentence in jail. Furthermore, the LAO found that the Governor's summary parole policy has merit and is similar to practices in other states where non-violent, non-serious offenders do not serve any time on parole after completing their prison term.

Program Description

Staff finds that the Governor's summary parole proposal is functionally equivalent to a direct discharge policy. The only difference is that offenders that are directly discharged from prison are not on parole and would not be subject to search and seizure without probable cause by any peace officer. However, peace officers would continue to have criminal history information about offenders directly discharged from state prison.

Other Budget Balancing Options. In addition to the Governor's budget balancing options, the Subcommittee reviewed numerous other options for reducing the prison population. These options included the LAO's alternative budget proposals to: (1) realign a portion of the parole population to local probation; (2) change sentences to make 10 wobbler crimes punishable as misdemeanors only; (3) implement a system of earned discharge from parole; (4) release aged non-violent, non-serious inmates early from prison; and (5) increase work-release credits for inmates that complete rehabilitation programs.

The Subcommittee also reviewed options recommended by an Expert Panel comprised of correctional experts from across the country. Some of these options are similar to recommendations made by the LAO, including (1) implementing a comprehensive system of direct discharge from prison and earned discharge from parole based on a risk assessment; (2) implementing of statutory-based system of credits and enhanced credits for inmates that complete prison programs; and (3) restricting technical parole violations and creating a system of alternative sanctions.

The state is currently implementing a form of earned discharge from parole because it is currently discharging non-violent, non-serious offenders from parole after one year of clean time. This policy does not constitute a comprehensive system of earned discharge, which is what is recommended by the Expert Panel.

Both the Expert Panel and the LAO recommend changes to the work credit system. The current system provides nearly all offenders that were not convicted of a violent offense 50 percent off their sentence if they are in a job or program and comply with prison rules. Currently offenders only receive 33 percent off their sentence for the time they serve in jail awaiting transfer to prison and many offenders are serving more than 50 percent of their sentence. The only offenders that earn more than 50 percent off their sentences are inmates that are serving their time in fire camps and these inmates have the opportunity to earn 66 percent off their sentence. Currently there are no additional credits given to inmates that complete programs or earn degrees in prison. There are also no incentives for inmates that consistently follow prison rules. The Expert Panel finds that a clear system of incentives and punishment is needed to improve the safety of the prison environment and to reduce recidivism.

Program Description

Corrections - Other Budget Factors. Since January, the Governor has requested \$72 million above the Governor's budget mainly related to increased expenditures driven by the court-appointed Receiver over correctional medical care. Therefore, even if the summary parole proposal is implemented, the department's budget will only be reduced by \$102 million in the budget year, which is \$252 million less than proposed in the Governor's budget.

Staff Recommendation. Given the state's fiscal condition, increasing prison costs related to complying with the U.S. Constitution and the pending initiatives that, if passed in November 2008, would increase state expenditures on local law enforcement and corrections, staff recommends a package of policy changes that will reduce the state prison population and save the state approximately \$500 million in the budget year. These savings would grow in future years as the full year impact of these policies is realized.

Nothing in this package shall be construed as altering "three-strikes" or "Jessica's Law" in any way.

The Committee should also reject the Governor's Early Release Proposal and Summary Parole Proposal. The proposed package of policy changes in Attachment A would be approved instead of the Governor's proposals and would generate approximately \$325 million more in savings than the Governor's proposal.

The proposed package is detailed in Attachment A.

Attachment A - Corrections Reform Package

		Savings/(Expenditures)
		In Millions
(a) Parole Reform		
	(1) Approve trailer bill language to authorize direct discharge for offenders convicted of non-serious, non-violent offenses and that have no priors that are serious or violent. This action would exclude all sex offenders. Direct discharge is functionally the same as summary parole in that there is no direct supervision of the offender. Local law enforcement would still have access to information about criminal history through databases. In addition, summary parole would not be allowed under the Safe Neighborhood Act Initiative that, if passed, would eliminate all savings related to summary parole.	\$191.0
	(2) Approve trailer bill language to authorize earned discharge from parole for offenders. This policy would exclude sex offenders and inmates sentenced to an indeterminate sentence of life in prison. Offenders would be eligible for an earned discharge under the following conditions:	
	- Non-serious, non-violent with violent or serious priors would be discharged after 5 months of clean time.	\$27.7
	- Serious, violent offenders would be discharged after 16 months clean time, which is roughly half the current parole period.	\$7.0
	(3) Increase funding to reduce parole ratios for all parolees currently on 70:1 caseload to a 50:1 caseload. This action is recommended as a companion to direct discharge, because if direct discharge is implemented there will be a change in the mix of offenders that will remain on parole. This policy should enhance supervision and the provision of supportive services for the remaining parolees.	(\$55.0)
	(4) Contract Jail Bed Savings. Similar to the Governor's summary parole policy, the alternative parole reforms listed above would result in a reduced need for contract jail beds in the budget year resulting in state savings.	\$38.3

Attachment A - Corrections Reform Package

	(5) Board of Parole Hearings/Case Records/Parole Academy Savings. Similar to the Governor's summary parole policy, the alternative parole reforms listed above would result in various other reduced expenditures at CDCR.	\$19.7
	(6) Approve trailer bill language to establish a pilot program in 10 trial courts that will divert certain parolees that would otherwise be revoked and sent back to state prison to alternative community sanctions using a drug court model. This program would build on the Parole Violation Intermediate Sanctions Program established in Chapter 645, Statutes of 2007. This would require CDCR to enter an agreement with the trial courts to monitor the participants in this program. Funding for this program would be provided from institution savings at CDCR.	\$20.0
	Subtotal Parole Reform	\$248.7
(b) Discharge of Infirm Inmates		
	(1) Direct CDCR to implement current law and authorize early release of infirmed offenders consistent with existing law. These inmates can cost the state upwards of \$1 million annually. Furthermore, some of these offenders may be eligible for Medi-Cal, but because they are incarcerated cannot benefit from this program. Early discharge would not preclude these offenders from being placed on parole or being monitored by GPS. This would exclude sex offenders.	\$15.0
(c) Credit Reform		
	(1) Approve trailer bill language to implement comprehensive credit reform that will (a) establish consistent day-for-day credit earning status for offenders currently eligible for earning day-for-day credit; (b) authorize the department to reward enhanced credits (up to 4 months total) to offenders that complete rehabilitation programs in prison; and (c) authorize the department to provide one month credit for every four months discipline free to encourage good behavior in state prison. These policies would reduce the time spent in prison for some inmates, provide inmates incentives to participate in programming that will reduce recidivism, and provide inmates with additional incentives to follow prison rules, thereby improving the safety of the prison environment.	\$150.0

Attachment A - Corrections Reform Package

(d) Updates to Property Crimes		
	(1) Approve trailer bill language to adjust the value thresholds for property crimes by inflation. Most of these thresholds have not been adjusted since 1982. For example, the property value threshold for grand theft would be increased from \$400 to \$750 to reflect inflation since 1982.	\$100.0
	- Grand Theft	
	- Forgery/Fraud	
	- Receiving Stolen Property	
	- Other Property	
Total Corrections Reform Package		\$513.7